



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Parts 100 and 165**

**[Docket No. USCG-2018-0532]**

**RIN 1625-ZA38**

**Navigation and Navigable Waters, and Shipping; Technical, Organizational, and Conforming Amendments for U.S. Coast Guard Field District 1**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is issuing non-substantive technical, organizational, and conforming amendments to existing regulations for District 1. These changes reflect the current status of the identified regulated navigation areas, special local regulations, safety zones and security zones within the district. This rule removes safety zones and special local regulations where the enforcement period has expired or the event is no longer held. This rule also removes special local regulations where the event no longer meets the criteria for a permitted event and is not suitable for coverage under a special local regulation in accordance with Coast Guard regulations.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-0532 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** For information about this document call or email Craig D. Lapiejko, Coast Guard; telephone (617) 223-8351, email

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**SUPPLEMENTARY INFORMATION:**

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**I. Abbreviations**

CATEX	Criteria for Categorical Exclusion
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

This rulemaking project was identified as part of the Coast Guard's Regulatory Reform Task Force Initiative. These First District field regulation changes were identified as part of the

deregulation identification process required by Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs); Executive Order 13777 (Enforcing the Regulatory Reform Agenda Deregulatory Process) and associated guidance issued in 2017. This rule makes technical and editorial corrections in Title 33 of the Code of Federal Regulations (C.F.R.). Specifically, the rule removes safety zones and special local regulations where the enforcement period has expired or the event is no longer held. This rule also removes special local regulations where the event no longer meets the criteria for a permitted event and is not suitable for coverage under a special local regulation in accordance with Coast Guard regulations. These changes are necessary to correct errors, change addresses, and make other non-substantive changes that improve the clarity of the C.F.R.. This rule does not create or change any substantive requirements.

The changes to 33 CFR Part 100 are specifically authorized under 46 U.S.C. 70041(a), which vests with the Commandant of the Coast Guard the authority to issue regulations to promote the safety of life on navigable waters during regattas or marine parades. The changes to 33 CFR Part 165 are authorized under the general authority of 46 U.S.C. 70034, granting the Secretary of the Department of Homeland Security broad authority to issue, amend, or repeal regulations as necessary to implement 46 U.S.C. chapter 700, Ports and Waterways Safety Program. The Secretary has delegated rulemaking authority under 46 U.S.C. 70034 to the Commandant via Department of Homeland Security Delegation No. 0170.1.<sup>1</sup>

The Coast Guard is issuing this rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity

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<sup>1</sup> The Coast Guard Authorization Act of 2018, Pub. L. 115-282, 132 Stat. 4192 (Dec. 4, 2018) redesignated 33 U.S.C. 1231 as 46 U.S.C. 70034.

to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exist for not publishing a notice of proposed rulemaking with respect to this rule because it is unnecessary to do so. All of the changes in this final rule involve only minor amendments to existing regulations that will not result in a substantive effect on the public.

#### **IV. Discussion of Rule**

The Coast Guard periodically issues technical, organizational, and conforming amendments to existing regulations in titles 33 and 46 of the C.F.R. These “technical amendments” provide the public with more accurate and current regulatory information but do not change the effect on the public of any Coast Guard regulations.

This rule amends § 100.114 by deleting an event reference to fireworks displays sponsored by the Bayville Crescent Club and moves it to its correct location in part 165.

Also in § 100.150, this rule removes the reference to the New York Super Boat Race on the Hudson River. This event has not been held since 2013, and there are no future plans for holding the event.

In part 165, we remove § 165.130, which is a security zone in Sandy Hook Bay, NJ, as this area is already regulated by the U.S. Army Corps of Engineers at 33 CFR 334.102. Pursuant to Executive Order 12866, agencies shall avoid duplicative regulations with other agencies.

Also, in § 165.151, which regulates Safety Zones, Fireworks Displays, Air Shows and Swim Events in the Captain of the Port Long Island Sound Zone, this rule makes several modifications to Table 1: In item 5.1, Jones Beach Airshow, the rule removes the time of the event and replaces it with the text “at a time to be determined annually,” because this event is not always held at the same time every year. Also, in item 7.24, Village of Ashroken Fireworks, the

rule corrects the paragraph to read the correct position of 40°45'39.93" N., 072°39'49.14" W. (NAD 83), as opposed to the incorrect coordinates currently listed. Additionally, this rule adds new item 7.49 concerning the Bayville Crescent Club Fireworks that was previously located at § 100.114.

Additionally, in § 165.160 which regulates Safety Zones; Fireworks Displays and Swim Events in Coast Guard Captain of the Port New York Zone, this rule removes event 1.1 in Table 1, Macy's 4th of July Fireworks. This event has not been held at this Hudson River location in several years and there are no future plans for holding the event in the Hudson River.

Finally, in § 165.169, the rule removes paragraph (a)(9)(ii), as vessels are not authorized within 100 yards of Rodman Neck. In 2004 the Coast Guard published a final rule establishing permanent safety and security zones in portions of the waters around the New York City Police Department ammunition depot on Rodman Neck in Eastchester Bay, NY (69 FR 2666). The final rule created a 100-yard boundary zone around Rodman Neck.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. A summary of our analyses based on these statutes or Executive Orders follows.

### *A. Regulatory Planning and Review*

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* the OMB Memorandum titled “Guidance Implementing Executive Order 13771, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

The Coast Guard proposes to revise its regulations to provide updates and clarifications to existing regulatory text in title 33 of the Code of Federal Regulations (CFR) parts 100 and 165. The revisions include the removal of temporary safety zones and special local regulations for past events, special local regulations for events no longer held and special local regulations for events no longer permitted. Normal navigation rules sufficiently cover the safety of participants and spectators at events that are no longer suitable for coverage under a special local regulation. This rule involves non-substantive changes and internal agency practices and procedures; it will not impose any additional costs on the public. The benefit of the non-substantive changes is increased clarity of regulations.

#### *B. Small Entities*

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are

independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

*C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this rule. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

*D. Collection of Information*

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

*E. Federalism*

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

*F. Indian Tribal Governments*

This rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*G. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531-1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100 million (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*H. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, and Commandant Instruction 5090.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f). Our

preliminary determination is that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under the **ADDRESSES** section of this preamble.

This rule meets the criteria for categorical exclusion (CATEX) under paragraphs L54 and L60(b) in Appendix A, Table 1 of DHS Directive 023–01. CATEX L54 pertains to promulgation of regulations that are editorial or procedural; and CATEX L60(b) pertains to regulations for establishing, disestablishing, or changing Regulated Navigation Areas and safety or security zones, notably for actions that disestablish or reduce the size of the area or zone. These regulation changes are consistent with the Coast Guard’s maritime safety and stewardship missions.

### **List of Subjects**

#### **33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

#### **33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons stated in the preamble, the Coast Guard amends 33 CFR parts 100 and 165 as follows:

### **PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

**§ 100.114 [Removed]**

2. Remove § 100.114

**§ 100.150 [Removed]**

3. Remove § 100.150

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

4. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

**§ 165.130 [Removed]**

5. Remove § 165.130

6. In § 165.151, amend Table 1 to § 165.151 as follows:

- a. In item 5.1, Jones Beach Airshow, remove the text “from 9:30 a.m. until 3:30 p.m. each day”, and add in its place the text “at a time to be determined annually”;

- b. In item 7.24, Village of Ashroken Fireworks, revise the reference “41°55’54.04” N., 073°21’27.97” W. (NAD 83)” to read “40°45’39.93” N., 072°39’49.14” W. (NAD 83)”;

- c. Add an entry for item 7.48 in numerical order.

The addition reads as follows:

**§ 165.151 Safety Zones; Fireworks Displays, Air Shows and Swim Events in the Captain of the Port Long Island Sound Zone.**

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**TABLE 1 TO §165.151**

* * * * *	
7.49 Bayville Crescent Club Fireworks	<ul style="list-style-type: none"><li>• Sponsor: Bayville Crescent Club, Bayville, NY.</li><li>• Time: 8 p.m. to 10 p.m.</li><li>• Location: Cooper Bluff, Cove Neck, NY.</li></ul>
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**§ 165.160 [Amended]**

7. In § 165.160, in Table 1 to § 165.60, remove event 1.1, Macy's 4th of July Fireworks.

**§ 165.169 [Amended]**

7. In § 165.169, remove paragraph (a)(9)(ii) and redesignate paragraph (a)(9)(iii) as paragraph (a)(9)(ii).

Date: January 8, 2020.

A. J. TIONGSON,  
REAR ADMIRAL, U.S. Coast Guard,  
Commander, First Coast Guard District.